

responsible for and shall pay one-half of the foregoing amounts. Notwithstanding anything to the contrary in this Agreement, the payment for each month for the Monthly Management Fee and the Hangar Rent shall be paid on or before the first day of that month.

- 5.2 **Costs and Expenses.** (a) In addition to the Monthly Management Fee and Hangar Rent, each Operator shall be solely responsible for all costs and expenses attributable to such Operator's use of the Aircraft under this Agreement. For purposes of this Agreement, costs and expenses attributable to an Operator's use of the Aircraft shall be deemed to be and include, but shall not be limited to, (i) a portion of the annual Total Fixed Expenses set forth in Exhibit B, as the same may be amended from time to time, that bears the same ratio to such annual Total Fixed Expenses that the total number of Flight Hours of use of the Aircraft by such Operator in any given year bears to the total number of Flight Hours of use of the Aircraft by all users thereof, (ii) the Total Variable Expenses amount specified in Exhibit C for each Flight Hour of use of the Aircraft by such Operator pursuant to this Agreement, as such amounts and such line items shall be revised from time to time, as necessary, to reflect the actual variable costs associated with the operation of the Aircraft, and (iii) all Incidental Expenses arising from the use of the Aircraft by such Operator. Services Provider shall have the right to request, and Operator agrees to pay Services Provider in advance, the cost of all scheduled and unscheduled maintenance events (including parts and labor) exceeding Twenty Thousand United States Dollars (US\$20,000.00)

(b) Every month during the Term of this Agreement, in addition to the Monthly Management Fee and the Hangar Fee, Services Provider shall be entitled to bill each Operator in arrears for (i) the actual amount of all Total Variable Expenses and Incidental Expenses attributable to such Operator's flights conducted during such month, and (ii) an amount equal to the product of the estimated Average Hourly Fixed Operating Costs multiplied by the number of Flight Hours of such Operator's flights conducted during such month.

- 5.3 [Intentionally omitted]

- 5.4 **Invoice and Payment.** Each Operator shall pay in arrears all compensation, costs and expenses and estimated Average Hourly Fixed Operating Costs due and payable by such Operator to Services Provider under this Section 5 within thirty (30) days of such Operator's receipt of a written invoice from Services Provider.

- 5.5 **Semi-annual and Final Accounting.** On the last day of the 6th month after the Effective Date, and semi-annually thereafter and at the end of each calendar year, and not later than the 15th day following termination of this Agreement, Services Provider shall make a full accounting to each Operator with supporting documentation in reasonable, as of such date, detail to permit each Operator to verify the level of charges and their appropriateness. All such accounting reports shall be delivered to each Operator within ten (10) days following the date in question. In the event actual Average Hourly Fixed Operating Costs of all operations of the Aircraft incurred to the date of any such accounting differs from the amounts paid by each Operator as estimated Average Hourly Fixed Operating Costs, the

parties shall settle all balances resulting from such difference not later than the 15th day after any such accounting.

SECTION 6. OPERATIONAL CONTROL

- 6.1 **Operational Control.** It is jointly agreed and acknowledged between each Operator and Services Provider that during all phases of flights conducted pursuant to this Agreement by or on behalf of one of the Operator's, such Operator shall have exclusive possession, command, and control of the Aircraft and shall retain Operational Control of the Aircraft at all times. Such Operator chooses not to hire its own pilots but to contract for the pilot services of Services Provider. Although the Aircraft Crew is supplied by Services Provider for such Operator's flights, the Aircraft Crew is under the exclusive command and control of such Operator in all phases of those flights, and such Operator shall exercise exclusive authority over initiating, conducting, or terminating any flight conducted pursuant to this Agreement.
- 6.2 **Automatic Termination.** Should, at any time, a court, governmental agency (including without limitation the FAA), or other authority having jurisdiction of the subject matter of this Agreement determine that any person or entity other than an Operator exercises Operational Control over flights in the Aircraft under this Agreement, or that any person or entity other than an Operator is, in fact, the operator (as such term is defined or interpreted by the FAA) of the Aircraft with respect to any flight under this Agreement, this Agreement shall automatically and immediately terminate. Such automatic termination shall not in any way affect, impair, or limit any liability or obligation of one party to the other which had accrued prior to such termination.
- 6.3 **Authority of Pilot in Command.** Notwithstanding that the Operator for or on behalf of whom a flight is operated shall have Operational Control of the Aircraft during any flight conducted pursuant to this Agreement, such Operator and Services Provider expressly agree that the Pilot in Command, in his or her sole discretion, may terminate any flight, refuse to commence any flight, or take any other flight-related action which in the judgment of the Pilot in Command is necessitated by considerations of safety. The Pilot in Command shall have final and complete authority to postpone, cancel or divert any flight for any reason or condition which in his or her judgment would compromise the safety of the flight. No such action of the Pilot in Command shall create or support any liability for loss, injury, damage or delay to Services Provider.

SECTION 7. LIENS AND TAXES

- 7.1 **Liens.** Services Provider shall ensure that no Liens are created or placed against the Aircraft by Services Provider or third parties as a result of Services Provider's actions and through no fault of Operator or Owner. Services Provider shall notify each Operator promptly upon learning of any Liens not permitted by these terms. Services Provider shall, at its own cost and expense, take all such actions as may be necessary to discharge and satisfy in full any such Lien or encumbrance promptly after the same becomes known to it. In accordance with

the terms of this Agreement, Services Provider shall pay all applicable charges related to the Aircraft as they become due and payable.

- 7.2 **Personal Property Taxes.** Each Operator shall pay, at its sole cost and expense, all personal property taxes imposed by any city, county, state, or federal governmental agency as a result of such Operator's lease of the Aircraft.
- 7.3 **Other Taxes.** No Operator shall in any event be or become liable for the payment of any franchise, income, excise, or other tax imposed upon Services Provider, whether due to Services Provider's performance of its duties and obligations under this Agreement or otherwise.

SECTION 8. INSURANCE

- 8.1 **Liability.** Services Provider, on behalf of Owner, shall maintain, or cause to be maintained, bodily injury and property damage liability insurance in an amount no less than Three Hundred Million United States Dollars (USD\$300,000,000.00) Combined Single Limit for the benefit of itself, each Operator in connection with the use of the Aircraft. Said policy shall be an occurrence policy naming Owner, each Operator and their successors and assigns as Named Insured, and Services Provider, Edward Blumenfeld, Bernard L. Madoff, and any additional lessees, as Additional Insureds.
- 8.2 **Hull.** Services Provider, on behalf of Owner, shall maintain all risk aircraft hull insurance in the amount of the full replacement value of the Aircraft, which Owner and Operator expressly agree is no less than Twenty-Four Million Five Hundred Thousand United States Dollars (USD\$24,500,000.00), and such insurance shall name Owner and any first lien mortgage holder as loss payees as their interests may appear. Said policy shall contain a waiver of subrogation clause in favor of each Operator and Services Provider.
- 8.3 **Insurance Certificates.** Services Provider, on behalf of Owner, will provide each Operator with a Certificate of Insurance upon execution of this Agreement and upon an Operator's request at any time thereafter.
- 8.4 **Conditions of Insurance.** Each insurance policy required hereunder shall insure the interests of each Operator, Owner and Services Provider regardless of any breach or violation by Services Provider of any warranties, declarations, or conditions contained in such policies. Each such policy shall be primary without any right of contribution from any other insurance maintained by any Operator, Owner or Services Provider. Each such policy shall insure Services Provider's contractual liability to each Operator contained in this Agreement (with a Breach of Warranty endorsement). The geographic limits, if any, contained in each and every such policy of insurance shall include at the minimum all territories over which any Operator will operate the Aircraft for which the insurance is placed. Each policy shall contain an agreement by the insurer that notwithstanding the lapse of any such policy for any reason or any right of cancellation by the insurer or Owner, whether voluntary or involuntary, such policy shall continue in force for the benefit of each Operator and Services Provider for

at least thirty (30) days (or such lesser time as may be permitted in the case of War Risk Insurance, if such War Risk Insurance so requires) after written notice of such lapse or cancellation shall have been given to each Operator and Services Provider. Each policy shall contain an agreement by the insurer to provide Owner, each Operator and Services Provider with thirty (30) days' advance written notice of any deletion, cancellation, or material change in coverage.

- 8.5 **Failure of Services Provider to Supply Insurance.** In the event Services Provider fails to fulfill its obligations, any Operator may, upon notice to Owner and Services Provider, undertake the performance of the insurance requirements hereunder by contracting for such insurance directly, and shall include Services Provider, as an Additional Insured on such Operator's policies. In the event an Operator exercises its rights under this Section 8.5, the estimated Average Hourly Fixed Operating Costs, for purposes of calculating amounts reimbursable to Services Provider, shall immediately be reduced by that portion of the Fixed and Variable Operating Costs attributable to such insurance. Upon request, such Operator shall furnish to Owner and Services Provider evidence of insurance in certificate form.
- 8.6 **Insurance Companies.** Each insurance policy required hereunder shall be issued by a company or companies who are qualified to do business in the United States and who (i) will submit to the jurisdiction of any competent state or federal court in the United States with regard to any dispute arising out of the policy of insurance or concerning the parties herein; and (ii) will respond to any claim or judgment against any Operator, Owner, or Services Provider in any competent state or federal court in the United States or its territories, and (iii) has an A.M. Best Company financial and performance rating of A:X or better.
- 8.7 **Destruction of Aircraft.** In the event the Aircraft is destroyed, lost, or damaged beyond repair, whether due to casualty, mechanical failure, or otherwise, this Agreement shall automatically terminate as of the date of such destruction, loss, or damage and neither party shall have any further obligations hereunder; provided, that however, such termination shall in no way affect, impair, or limit (a) any liability or obligation of one party to the other which had accrued prior to such destruction, loss or damage or (b) any liability of each Operator to Services Provider and/or Services Provider to Operator as a result of negligence or willful misconduct resulting in such destruction, loss, or damage.
- 8.8 **Additional Insurance.** Services Provider, at its sole cost and expense, shall maintain such other insurance as is reasonable and customary for a provider of aircraft pilot and management services as contemplated hereunder. Services Provider will provide each Operator with a certificate of insurance evidencing such coverage.

SECTION 9. DEFAULTS AND REMEDIES

- 9.1 Upon the occurrence of any failure of Services Provider to duly observe or perform any of its obligations hereunder and at any time thereafter so long as the same shall be continuing, any Operator may, at its option, declare in writing to the Services Provider and the other Operator that this Agreement is in default; and at any time thereafter, so long as the Services Provider